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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 11 2007

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought but concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner reiterates his accomplishments. For the reasons discussed below, we find that the director applied the wrong standard and that a waiver of the alien employment requirement is warranted in this matter.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Physiological Sciences from Kobe University in Japan. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

The director quoted the above language and stated that the record did not establish that the petitioner's "credentials exceed those of all aliens who seek to qualify as aliens of 'exceptional ability,' as that terms is defined" at 8 C.F.R. § 204.5(k)(3)(ii). The director, however, ignores that the national interest waiver is available to both aliens of exceptional ability *and* advanced degree professionals. We know of no legal authority that requires an advanced degree professional to demonstrate that his *credentials* exceed those of *all* aliens seeking classification as aliens of exceptional ability to secure a national interest waiver. Rather, the *benefit* of this alien's entry into the United States must exceed the benefit inherent in admitting aliens of exceptional ability. For example, the benefit for aliens of exceptional ability not seeking a national interest waiver is not necessarily national in scope for each alien. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 217, n.3. (Comm. 1998.)

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 215, has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, pharmacology, and that the proposed benefits of his work, prevention of cardiac cell death and deterioration of heart function, would be national in scope. Moreover, his research is also relevant to other diseases. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The director dismissed the petitioner's reference letters, comparing the petitioner's own credentials with those of his references. The director further dismissed the petitioner's publication and citation record, concluding that the petitioner did not have a "sustained pattern of achievement." The director appears to be applying a standard that approaches the stricter classification, aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. That classification requires that the alien be one of few at the top of his field and that he have sustained national or international acclaim. Thus, a comparison with other experienced and renowned members of the field would be relevant in such cases. The benefit sought in this matter, however, does not require that the petitioner's credentials compare with his far more experienced expert references, although the credentials of his peers might be relevant in determining the types of achievements inherent to the field.

The director acknowledged the submission of reference letters, but concluded that they did not establish the overall impact of his work. More specifically, the director stated that while the petitioner has contributed to the general body of knowledge in his field, "the types of research progress discussed would not from a layman's comprehension appear to constitute the level of breakthrough that would qualify the petitioner for the benefit being sought." We find, however, that the letters are very specific in identifying how the petitioner has impacted the field and the record corroborates these claims.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795

(Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation are the most persuasive.

As stated above, the petitioner received his Ph.D. from Kobe University in 2001. In 2002, the petitioner joined the laboratory of [redacted] at the University of Tennessee and subsequently followed him to Loyola University Chicago where he remained as of the date of filing in 2005.

[redacted], a professor at Purdue University and former assistant professor at Kobe University, indicates that he supervised the petitioner's work at Kobe University. The petitioner's Ph.D. research focused on Ras, an oncogene that serves as a regulator of cell growth. Thus, a mutation can lead to uncontrolled growth, or cancer. Specifically, Ras mutations are implicated in 15 percent of all cancers, with a rate of 90 percent for pancreatic and colon cancer. Thus, it is important to characterize all regulators of Ras. The petitioner demonstrated several interactions in the Ras transmission flow. [redacted] notes that this work has been cited. In addition, [redacted], a professor at the University of Michigan, indicates that he became aware of the petitioner's work while the petitioner was still a graduate student in Japan. [redacted] reiterates the significance of the work and also notes that it has been cited.

[redacted] Director and Founder of the Biomedical Research Centre at the University of British Columbia, indicates that his laboratory co-discovered a member of the [redacted] family, [redacted] indicates that he became aware of the petitioner's work in Japan as it focused on interactions between M-Ras and other molecules. [redacted] characterizes the petitioner's work on Ras as "breakthrough" and indicates that after the petitioner's work was published, many laboratories began studying an effector identified by the petitioner, PLCϵ. Similarly, [redacted] Olson, Dean of the Graduate School of Biomedical Studies at the University of Texas who has served on funding panels for most government agencies, asserts that the petitioner's work with Ras caught his eye.

The petitioner's citation record supports the above letters. For example, the petitioner's articles on PLCϵ and RA-GEF as an exchange factor for Ras had been cited 29 times and 35 times as of the date of filing. In addition, the petitioner's first-authored article on RA-GEF-2 as a downstream target of M-Ras had been cited 27 times as of the date of filing. Some of the cited propositions are prefaced

with words such as "interestingly" and "intriguingly." The petitioner's work has also been the subject of review articles and is even discussed at length in a book chapter authored by an independent research team.

In [redacted]s laboratory, the petitioner has focused on the regulation of adenylyl cyclases, an enzyme that catalyzes the conversion of ATP to cAMP. This signaling molecule relates to metabolism, heart contraction, neurotransmission, neuronal development, drug addition, memory and learning. As it relates to heart disease, cAMP is required for normal heart function but overproduction leads to cell death. Thus, an understanding of the regulation of cAMP is important in cardiology. The protein associated with c-Myc (PAM) is a potent inhibitor of adenylyl cyclases. [redacted] explains that PAM is a large gene, making it difficult to construct. [redacted] indicates that several researchers in his laboratory had failed to do so, but that the petitioner was able to construct PAM and introduce it into mammalian cells for expression. [redacted] does not merely opine that this work is significant or original (as all published research is), but expressly states that since this work was published, "we have had several requests from individuals all around the world requesting the cDNA constructs that [the petitioner] has created." According to [redacted] this work has also fostered collaborations with other laboratories.

[redacted], a professor at the University of Tennessee, discusses the petitioner's work with PAM in additional detail. The petitioner elucidated the mechanism of the PAM inhibitory effect and regions responsible for the effect, RHD2. More specifically, the petitioner demonstrated that two histidine residues in RHD2 are responsible for PAM's inhibitory effect. [redacted] explains that this work is important as it provides new target sequences for designing drugs for heart diseases through the use of mimicking agents. Another professor at the University of Tennessee, [redacted] explains how this work relates to neurology as the two histidine residues are critical for neuronal development.

In addition to the above work, [redacted] explains that the petitioner has also demonstrated that zinc and copper inhibit Gsα, a protein that stimulates adenylyl cyclase activity. This work has "wide implication in the pathogenesis of copper and zinc toxicity."

As of the date of filing, the petitioner had only published two recent articles with [redacted] and the record does not demonstrate that this recent work had been cited as of the date of filing. Nevertheless, the petitioner submitted letters from independent scientists at the New Jersey Medical School and the University of Utah discussing the significance of this work. These letters, in combination with the evidence of the impact of his prior related work in Japan, sufficiently demonstrate that the petitioner has a track record of success with a degree of influence on the field as a whole.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the pharmacology research community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the

national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.